

PUBLIC DRAFT

Representative Stephen D. Clark proposes the following substitute bill:

1 **IMPACT OF ADMINISTRATIVE RULES ON**

2 **SMALL BUSINESSES**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Stephen D. Clark**

6 Senate Sponsor: _____

7 **=====**

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Administrative Rulemaking Act to address the economic impact
11 of state agency rules on small businesses.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ requires a state agency to consider methods to minimize the impact of an agency's
15 proposed administrative rule if the agency reasonably expects the rule will have a
16 measurable negative fiscal impact on small businesses; and
17 ▶ makes technical corrections regarding cross references.

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **53C-1-201**, as last amended by Laws of Utah 2007, Chapter 306

00053001

H.B. 53

25 **63-46a-4**, as last amended by Laws of Utah 2007, Chapters 102 and 168

26 **63-46a-7**, as last amended by Laws of Utah 2005, Chapter 48

27 **63-46a-10.5**, as last amended by Laws of Utah 2005, Chapter 48

28

29 *Be it enacted by the Legislature of the state of Utah:*

30 Section 1. Section **53C-1-201** is amended to read:

31 **53C-1-201. Creation of administration -- Purpose -- Director.**

32 (1) (a) There is established within state government the School and Institutional Trust
33 Lands Administration.

34 (b) The administration shall manage all school and institutional trust lands and assets
35 within the state, except as otherwise provided in Title 53C, Chapter 3, Deposit and Allocation
36 of Revenue from Trust Lands, and Sections 51-7a-201 and 51-7a-202.

37 (2) The administration is an independent state agency and not a division of any other
38 department.

39 (3) (a) It is subject to the usual legislative and executive department controls except as
40 provided in this Subsection (3).

41 (b) (i) The director may make rules as approved by the board that allow the
42 administration to classify a business proposal submitted to the administration as protected
43 under Section 63-2-304, for as long as is necessary to evaluate the proposal.

44 (ii) The administration shall return the proposal to the party who submitted the
45 proposal, and incur no further duties under Title 63, Chapter 2, Government Records Access
46 and Management Act, if the administration determines not to proceed with the proposal.

47 (iii) The administration shall classify the proposal pursuant to law if it decides to
48 proceed with the proposal.

49 (iv) Section 63-2-403 does not apply during the review period.

50 (c) The director shall make rules in compliance with Title 63, Chapter 46a, Utah
51 Administrative Rulemaking Act, except that the administration is not subject to Subsections
52 63-46a-4(6) and (7), and the director, with the board's approval, may establish a procedure for
53 the expedited approval of rules, based on written findings by the director showing:

54 (i) the changes in business opportunities affecting the assets of the trust;

55 (ii) the specific business opportunity arising out of those changes which may be lost

without the rule or changes to the rule;

(iii) the reasons the normal procedures under Section 63-46a-4 cannot be met without causing the loss of the specific opportunity;

(iv) approval by at least five board members; and

(v) that the director has filed a copy of the rule and a rule analysis, stating the specific reasons and justifications for its findings, with the Division of Administrative Rules and notified interested parties as provided in Subsection 63-46a-4~~(8)~~ (9).

(d) (i) The administration shall comply with Title 67, Chapter 19, Utah State Personnel Management Act, except as provided in this Subsection (3)(d).

(ii) The board may approve, upon recommendation of the director, that exemption for specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable the administration to efficiently fulfill its responsibilities under the law. The director shall consult with the executive director of the Department of Human Resource Management prior to making such a recommendation.

(iii) The positions of director, deputy director, associate director, assistant director, legal counsel appointed under Section 53C-1-305, administrative assistant, and public affairs officer are exempt under Subsections 67-19-12(2) and 67-19-15(1).

(iv) Salaries for exempted positions, except for the director, shall be set by the director, after consultation with the executive director of the Department of Human Resource Management, within ranges approved by the board. The board and director shall consider salaries for similar positions in private enterprise and other public employment when setting salary ranges.

(v) The board may create an annual incentive and bonus plan for the director and other administration employees designated by the board, based upon the attainment of financial performance goals and other measurable criteria defined and budgeted in advance by the board.

(e) The administration shall comply with Title 63, Chapter 56, Utah Procurement Code, except where the board approves, upon recommendation of the director, exemption from the Utah Procurement Code, and simultaneous adoption of rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for procurement, which enable the administration to efficiently fulfill its responsibilities under the law.

(f) (i) The board and director shall review the exceptions under this Subsection (3) and

87 make recommendations for any modification, if required, which the Legislature would be asked
88 to consider during its annual general session.

89 (ii) The board and director may include in their recommendations any other proposed
90 exceptions from the usual executive and legislative controls the board and director consider
91 necessary to accomplish the purpose of this title.

92 (4) The administration is managed by a director of school and institutional trust lands
93 appointed by a majority vote of the board of trustees with the consent of the governor.

94 (5) (a) The board of trustees shall provide policies for the management of the
95 administration and for the management of trust lands and assets.

96 (b) The board shall provide policies for the ownership and control of Native American
97 remains that are discovered or excavated on school and institutional trust lands in consultation
98 with the Division of Indian Affairs and giving due consideration to Title 9, Chapter 9, Part 4,
99 Native American Grave Protection and Repatriation Act. The director may make rules in
100 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to implement
101 policies provided by the board regarding Native American remains.

102 (6) In connection with joint ventures for the development of trust lands and minerals
103 approved by the board under Sections 53C-1-303 and 53C-2-401, the administration may
104 become a member of a limited liability company under Title 48, Chapter 2c, Utah Revised
105 Limited Liability Company Act, and is considered a person under Section 48-2c-102.

106 Section 2. Section **63-46a-4** is amended to read:

107 **63-46a-4. Rulemaking procedure.**

108 (1) An agency authorized to make rules is also authorized to amend or repeal those
109 rules.

110 (2) Except as provided in Sections 63-46a-6 and 63-46a-7, when making, amending, or
111 repealing a rule agencies shall comply with:

112 (a) the requirements of this section;

113 (b) consistent procedures required by other statutes;

114 (c) applicable federal mandates; and

115 (d) rules made by the division to implement this chapter.

116 (3) Subject to the requirements of this chapter, each agency shall develop and use
117 flexible approaches in drafting rules that meet the needs of the agency and that involve persons

118 affected by the agency's rules.

119 (4) (a) Each agency shall file its proposed rule and rule analysis with the division.

120 (b) Rule amendments shall be marked with new language underlined and deleted
121 language struck out.

122 (c) (i) The division shall publish the information required under this Subsection (4) on
123 the rule analysis and the text of the proposed rule in the next issue of the bulletin.

124 (ii) For rule amendments, only the section or subsection of the rule being amended
125 need be printed.

126 (iii) If the director determines that the rule is too long to publish, the director shall
127 publish the rule analysis and shall publish the rule by reference to a copy on file with the
128 division.

129 (5) Prior to filing a rule with the division, the department head shall consider and
130 comment on the fiscal impact a rule may have on businesses.

131 (6) If the agency reasonably expects that a proposed rule will have a measurable
132 negative fiscal impact on small businesses, the agency shall consider, as allowed by federal
133 law, each of the following methods of reducing the impact of the rule on small businesses:

134 (a) establishing less stringent compliance or reporting requirements for small
135 businesses;

136 (b) establishing less stringent schedules or deadlines for compliance or reporting
137 requirements for small businesses;

138 (c) consolidating or simplifying compliance or reporting requirements for small
139 businesses;

140 (d) establishing performance standards for small businesses to replace design or
141 operational standards required in the proposed rule; and

142 (e) exempting small businesses from all or any part of the requirements contained in
143 the proposed rule.

144 (7) If during the public comment period an agency receives comment that the proposed
145 rule will cost small business more than one day's gross receipts, and the agency had not
146 previously performed the analysis in Subsection (6), the agency shall perform the analysis
147 described in Subsection (6).

148 ~~[(6)]~~ (8) The rule analysis shall contain:

- 149 (a) a summary of the rule or change;
- 150 (b) the purpose of the rule or reason for the change;
- 151 (c) the statutory authority or federal requirement for the rule;
- 152 (d) the anticipated cost or savings to:
- 153 (i) the state budget;
- 154 (ii) local governments;
- 155 (iii) small businesses; and
- 156 (iv) persons other than small businesses, businesses, or local governmental entities;
- 157 (e) the compliance cost for affected persons;
- 158 (f) how interested persons may review the full text of the rule;
- 159 (g) how interested persons may present their views on the rule;
- 160 (h) the time and place of any scheduled public hearing;
- 161 (i) the name and telephone number of an agency employee who may be contacted
- 162 about the rule;
- 163 (j) the name of the agency head or designee who authorized the rule;
- 164 (k) the date on which the rule may become effective following the public comment
- 165 period; and
- 166 (l) comments by the department head on the fiscal impact the rule may have on
- 167 businesses.

168 ~~[(7)]~~ (9) (a) For a rule being repealed and reenacted, the rule analysis shall contain a9

169 summary that generally includes the following:

- 170 (i) a summary of substantive provisions in the repealed rule which are eliminated from
- 171 the enacted rule; and
- 172 (ii) a summary of new substantive provisions appearing only in the enacted rule.
- 173 (b) The summary required under this Subsection ~~[(7)]~~ (9) is to aid in review and may
- 174 not be used to contest any rule on the ground of noncompliance with the procedural
- 175 requirements of this chapter.

176 ~~[(8)]~~ (10) A copy of the rule analysis shall be mailed to all persons who have made10

177 timely request of the agency for advance notice of its rulemaking proceedings and to any other

178 person who, by statutory or federal mandate or in the judgment of the agency, should also

179 receive notice.

180 ~~[(9)]~~ (11) (a) Following the publication date, the agency shall allow at least 30 days for
181 public comment on the rule.

182 (b) The agency shall review and evaluate all public comments submitted in writing
183 within the time period under Subsection ~~[(9)]~~ (11)(a) or presented at public hearings conducted
184 by the agency within the time period under Subsection ~~[(9)]~~ (11)(a).

185 ~~[(10)]~~ (12) (a) Except as provided in Sections 63-46a-6 and 63-46a-7, a proposed rule
186 becomes effective on any date specified by the agency that is no fewer than seven calendar days
187 after the close of the public comment period under Subsection ~~[(9)]~~ (11), nor more than 120
188 days after the publication date.

189 (b) The agency shall provide notice of the rule's effective date to the division in the
190 form required by the division.

191 (c) The notice of effective date may not provide for an effective date prior to the date it
192 is received by the division.

193 (d) The division shall publish notice of the effective date of the rule in the next issue of
194 the bulletin.

195 (e) A proposed rule lapses if a notice of effective date or a change to a proposed rule is
196 not filed with the division within 120 days of publication.

197 ~~[(11)]~~ (13) (a) As used in this Subsection ~~[(11)]~~ (13), "initiate rulemaking proceedings"
198 means the filing, for the purposes of publication in accordance with Subsection (4), of an
199 agency's proposed rule that is required by state statute.

200 (b) A state agency shall initiate rulemaking proceedings no later than 180 days after the
201 effective date of the statutory provision that requires the rulemaking.

202 (c) If a state agency does not initiate rulemaking proceedings in accordance with the
203 time requirements in Subsection ~~[(11)]~~ (13)(b), the state agency shall appear before the
204 legislative Administrative Rules Review Committee and provide the reasons for the delay.

205 Section 3. Section **63-46a-7** is amended to read:

206 **63-46a-7. Emergency rulemaking procedure.**

207 (1) All agencies shall comply with the rulemaking procedures of Section 63-46a-4
208 unless an agency finds that these procedures would:

209 (a) cause an imminent peril to the public health, safety, or welfare;

210 (b) cause an imminent budget reduction because of budget restraints or federal

requirements; or

(c) place the agency in violation of federal or state law.

(2) (a) When finding that its rule is excepted from regular rulemaking procedures by this section, the agency shall file with the division:

(i) the text of the rule; and

(ii) a rule analysis that includes the specific reasons and justifications for its findings.

(b) The division shall publish the rule in the bulletin as provided in Subsection 63-46a-4 (4).

(c) The agency shall notify interested persons as provided in Subsection 63-46a-4[(8)] (10).

(d) The rule becomes effective for a period not exceeding 120 days on the date of filing or any later date designated in the rule.

(3) If the agency intends the rule to be effective beyond 120 days, the agency shall also comply with the procedures of Section 63-46a-4.

Section 4. Section **63-46a-10.5** is amended to read:

63-46a-10.5. Repeal and reenactment of Utah Administrative Code.

(1) When the director determines that the Utah Administrative Code requires extensive revision and reorganization, the division may repeal the code and reenact a new code according to the requirements of this section.

(2) The division may:

(a) reorganize, reformat, and renumber the code;

(b) require each agency to review its rules and make any organizational or substantive changes according to the requirements of Section 63-46a-6; and

(c) require each agency to prepare a brief summary of all substantive changes made by the agency.

(3) The division may make nonsubstantive changes in the code by:

(a) adopting a uniform system of punctuation, capitalization, numbering, and wording;

(b) eliminating duplication;

(c) correcting defective or inconsistent section and paragraph structure in arrangement of the subject matter of rules;

(d) eliminating all obsolete or redundant words;

(e) correcting obvious errors and inconsistencies in punctuation, capitalization, numbering, referencing, and wording;

(f) changing a catchline to more accurately reflect the substance of each section, part, rule, or title;

(g) updating or correcting annotations associated with a section, part, rule, or title; and

(h) merging or determining priority of any amendment, enactment, or repeal to the same rule or section made effective by an agency.

(4) (a) To inform the public about the proposed code reenactment, the division shall publish in the bulletin:

(i) notice of the code reenactment;

(ii) the date, time, and place of a public hearing where members of the public may comment on the proposed reenactment of the code;

(iii) locations where the proposed reenactment of the code may be reviewed; and

(iv) agency summaries of substantive changes in the reenacted code.

(b) To inform the public about substantive changes in agency rules contained in the proposed reenactment, each agency shall:

(i) make the text of their reenacted rules available:

(A) for public review during regular business hours; and

(B) in an electronic version; and

(ii) comply with the requirements of Subsection 63-46a-4~~(8)~~ (10).

(5) The division shall hold a public hearing on the proposed code reenactment no fewer than 30 days nor more than 45 days after the publication required by Subsection (4)(a).

(6) The division shall distribute complete text of the proposed code reenactment without charge to:

(a) state-designated repositories in Utah;

(b) the Administrative Rules Review Committee; and

(c) the Office of Legislative Research and General Counsel.

(7) The former code is repealed and the reenacted code is effective at noon on a date designated by the division that is not fewer than 45 days nor more than 90 days after the publication date required by this section.

(8) Repeal and reenactment of the code meets the requirements of Section 63-46a-9 for

273 a review of all agency rules.